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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 50 and 58**

**[Docket No. FR-5616-P-01]**  
**RIN 2506-AC34**

**Environmental Compliance Recordkeeping Requirements**

**AGENCY:** Office of Secretary, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the regulations governing the format used for conducting the required environmental reviews for HUD program and policy actions. HUD's current regulations require that HUD staff document part 50 environmental review compliance using form HUD-4128. Recipients receiving HUD assistance and other entities responsible for conducting part 58 environmental reviews ("responsible entities") are currently allowed to use either HUD-recommended formats or develop equivalent formats for documenting environmental review compliance.

The reference to a specific form number in part 50 restricts HUD's ability to adopt alternative form designations and forms, while authorizing the use of alternate forms in part 58 makes it difficult for HUD to assess, compare, and collect data on responsible entities' environmental review records. Despite being applicable to different parties, environmental review responsibilities under parts 50 and 58 are substantively similar. In light of that, the proposed rule would give the Departmental Environmental Clearance Officer (DECO) the authority to create one standardized format for use in both part 50 and part 58 reviews and authorize exceptions, thereby eliminating unnecessary distinctions between reviews completed by HUD employees and responsible entities.

This proposed rule would also make a technical amendment to part 58 by making the regulations consistent with the “Environmental Assessment” definition provided in the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (42 U.S.C. 4321 et seq.) (NEPA).

**DATES:** Comment Due Date: [INSERT DATE THAT IS 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

**No Facsimile Comments.** Facsimile (fax) comments are not acceptable.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Danielle Schopp, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, Room 7250, Washington, DC 20410; telephone number 202-402-4442 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

NEPA and related authorities<sup>1</sup> require the review of potential environmental impacts of, and the preparation of environmental reviews for, Federal policy and program actions. HUD's

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<sup>1</sup> See 24 CFR 50.4 and 24 CFR 58.5-6 for a listing of these Federal laws and authorities.

regulations at 24 CFR part 50 and part 58 implement these environmental requirements. HUD's regulations at 24 CFR part 50, entitled "Protection and Enhancement of Environmental Quality," govern the environmental reviews performed by HUD for its policies and programs. The regulations at 24 CFR part 58, entitled "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," prescribe the requirements governing environmental reviews performed by recipients of HUD assistance and other responsible entities that assume HUD's environmental responsibilities in applicable HUD programs. Both 24 CFR parts 50 and 58 address the formats used for preparing and documenting the required environmental reviews.

The part 50 regulations at § 50.20(a) and § 50.31(a) require HUD employees to document compliance with the environmental requirements through use of form HUD-4128. The reference to a single form number in part 50 restricts HUD's ability to issue a new form with a different designation or other forms. Updating the regulations to reflect new forms would require the use of potentially lengthy notice-and-comment rulemaking procedures. Such procedures would be redundant because new forms are already subject to the notice-and-comment process of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA).

The part 58 regulations at § 58.38 and § 58.40 allow entities assuming HUD environmental review responsibilities to use a HUD-recommended format or develop an equivalent format for preparing and documenting an environmental review. As a result, entities use a variety of formats. This sometimes makes it difficult for HUD and interested members of the public to assess compliance and prevents HUD from collecting reliable data.

## **II. This Proposed Rule**

This proposed rule would address these concerns by revising the regulations addressing the formats used for environmental reviews. First, this proposed rule would amend 24 CFR part 50 by removing the reference to the form HUD-4128. The revised regulations would instead require that HUD staff use a format approved by the DECO to prepare and document the required environmental reviews. Applicable environmental authorities vary from program to program. Accordingly, the DECO may prescribe alternative formats as necessary to meet specific program needs. This rule is not proposing to change or replace form HUD-4128. Such actions would more appropriately be taken through the process for approval of collections of information and recordkeeping requirements under the PRA.

This proposed rule would also amend 24 CFR part 58 by establishing uniformity in the formats used by entities assuming HUD's environmental review responsibilities. Specifically, the proposed rule would require these entities to use a format prescribed by the DECO. As for environmental reviews under part 50, the DECO may prescribe alternative formats as necessary to meet specific program needs. This rule is not prescribing the format; rather, such paperwork requirements will be established through the PRA notice-and-comment process.

This proposed rule would also make a technical amendment to § 58.40 for consistency with the CEQ regulations implementing NEPA's environmental assessment requirements. The regulations issued by the CEQ at 40 CFR parts 1500–1508 establish the basic procedural requirements for compliance with NEPA by all Federal agencies. When responsible entities assume HUD's environmental review responsibilities, they must follow the CEQ environmental assessment regulations at 40 CFR 1508.9. HUD's procedures mirror the CEQ procedures for performing an environmental assessment, but for clarity HUD is incorporating the CEQ's language for completing the environmental assessments in HUD's regulations.

### **III. Findings and Certifications**

#### Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

As discussed above in this preamble, the proposed rule would revise the regulations governing the format used for conducting the required environmental reviews for HUD program and policy actions. Consistent with the goals of Executive Order 13563, the proposed amendments would simplify and standardize the format requirements. Changes to the format would now be made through the PRA notice-and-comment process, the more appropriate forum for such changes. In addition, the proposed rule would make a technical amendment to include in HUD’s regulations the procedures a responsible entity must complete when preparing an environmental assessment already required under the CEQ regulations. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by OMB.

#### Paperwork Reduction Act

The information collection requirements for part 50 and part 58 contained in this proposed rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) and assigned OMB control numbers 2506-0177 and 2506-0087, respectively. In accordance with the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would not add any new substantive regulatory obligations on participants in HUD programs. The current regulations already require that entities maintain environmental review records in accordance with HUD-recommended formats or equivalent formats, and HUD is merely standardizing the recording format. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute or the rule preempts state law,

unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### Environmental Review

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the NEPA.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

#### **List of Subjects**

##### 24 CFR Part 50

Environmental quality, Environmental protection, Environmental review policy and procedures, Environmental assessment, Environmental impact statement, Compliance record.

##### 24 CFR Part 58



Environmental protection, Community Development Block Grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to revise 24 CFR parts 50 and 58, to read as follows:

## **PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY**

1. The authority citation for part 50 is revised to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 4321-4335; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

2. In § 50.18, designate the undesignated paragraph as paragraph (b) and add new paragraph (a) to read as follows:

### **§ 50.18 General.**

(a) The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format to be used to document compliance with NEPA and the Federal laws and authorities cited in § 50.4 where their applicability is indicated below. The DECO may prescribe alternative formats as necessary to meet specific program needs.

\* \* \* \* \*

3. Revise § 50.20(a) to read as follows:

### **§ 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.**

(a) The following actions, activities, and programs are categorically excluded from the NEPA requirements for further review in an Environmental Assessment or an Environmental Impact Statement as set forth in this part. They are not excluded from individual compliance requirements of other environmental statutes, Executive orders, and HUD standards cited in §50.4, where appropriate. Where the responsible official determines that any proposed action identified below may have an environmental effect because of extraordinary circumstances (40 CFR 1508.4), the requirements for further review under NEPA shall apply (see paragraph (b) of this section).

\* \* \* \* \*

4. Revise § 50.31(a) to read as follows:

**§ 50.31 The EA.**

(a) The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format used for the environmental analysis and documentation of projects and activities under subpart E. The DECO may prescribe alternative formats as is necessary to meet specific program needs.

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**PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING  
HUD ENVIRONMENTAL RESPONSIBILITIES**

5. The authority citation for part 58 is revised to read as follows:

12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

6. In § 58.38, revise the introductory text to read as follows:

**§ 58.38 Environmental review record.**

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the “Environmental Review Record” (ERR) and shall be available for public review. The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format that the responsible entity shall use to prepare the ERR. The DECO may prescribe alternative formats as is necessary to meet specific program needs.

\* \* \* \* \*

7. In § 58.40, revise the introductory text and paragraph (e) to read as follows:

**§ 58.40 Preparing the environmental assessment.**

The DECO shall establish a prescribed format that the responsible entity shall use to prepare the EA. The DECO may prescribe alternative formats as is necessary to meet specific program needs. In preparing an EA for a particular proposed project or other action, the responsible entity must:

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(e) Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the

environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

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Date: January 31, 2014

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Shaun Donovan, Secretary

**[FR-5616-P-01]**

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